



Department of Justice

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AT
(202) 616-2777
TDD (202) 514-1888

ANTITRUST DIVISION RELEASES DETAILS OF MERGER REVIEW PROCESS INITIATIVE

Program Stresses Early Identification of Issues and Negotiation of Investigative Plans

WASHINGTON, D.C. - The Antitrust Division announced the details of its Merger Review Process Initiative on its web site today. The initiative, which can be found at www.usdoj.gov/atr <<http://www.usdoj.gov>>, is the culmination of an extensive internal review and analysis of the Antitrust Division's best practices for investigating mergers and acquisitions.

In August 2001, Assistant Attorney General Charles A. James outlined the new program before the American Bar Association's 124th Annual Meeting in Chicago.

The goals of the initiative are to more quickly identify critical legal, factual and economic issues regarding proposed mergers, facilitate more efficient and more focused investigative discovery and provide for an effective process for the evaluation of evidence. While the program should allow the Division to deploy its investigative resources more efficiently and effectively, it should also, where possible, reduce the investigative burden upon parties proposing transactions.

The initiative is designed to empower and encourage Division staff to actively tailor investigative plans and strategies according to each proposed transaction, in lieu of reliance on standardized procedures or models. The success of this effort, however, will require the active participation and cooperation of the parties, who may or may not wish to engage with the staff in an active process of identifying and resolving critical issues.

"This program is good government and makes good business sense," said James. "This initiative will enable the parties to get to the significant legal issues of a merger transaction in a clearer, more effective and more efficient way."

The Hart-Scott-Rodino Act of 1976 (HSR), an amendment to the Clayton Act, imposes waiting period requirements on individuals and companies over a certain size that contemplate mergers or acquisitions of stock or assets over a certain value. Under the Act, the parties to a reportable transaction must wait 30 days after the transaction is reported before the deal may be consummated. If during that initial 30-day waiting period the Antitrust Division issues a request for additional information, referred to as a "Second Request," the Division has an additional 30 days after the parties have substantially complied with the Second Request within which to make an enforcement decision.

The initiative addresses the use of the initial 15- or 30-day waiting period, the issuance of Second Request, and the post-Second Request Period.

*Initial 30-day waiting period: The staff is encouraged to be as aggressive as possible during the initial 15- or 30-day waiting period by making voluntary requests for information, and through early consultation with the parties.

*Issuance of Second Request: The Division staff will use the knowledge gained within the initial 15- or 30-day period to tailor the Second Requests as narrowly as possible to the transaction and the goals of the investigation.

* Post-Second Request Period: The initiative encourages staff to engage in regular consultations with the parties, and in appropriate circumstances commit to procedural agreements in exchange for specific undertakings by the parties regarding their submission of information and compliance with particular investigative requests.

The program is completely voluntary for parties proposing mergers.

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